



FH
[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

DECISION

MGE/166884

PRELIMINARY RECITALS

Pursuant to a petition filed June 24, 2015, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03(1), to review a decision by the Waupaca County Department of Social Services in regard to Medical Assistance, a hearing was held on November 18, 2015, at Waupaca, Wisconsin.

The issue for determination is whether Petitioner's patient liability for May and June 2015 may be adjusted by increasing the spousal income allocation.

NOTE: This hearing was originally scheduled for July 21, 2015. It was rescheduled at the request of Petitioner's husband because he had a work conflict. The hearing was scheduled for August 18, 2015, but Petitioner's husband had another work conflict. The hearing was then scheduled for September 15, 2015.

A hearing convened on September 15, 2015, but was continued to October 8, 2015, to give the parties an opportunity to review the issue of Petitioner's case closure effective August 1, 2015.

A hearing convened on October 8, 2015, but was continued to November 18, 2015, because the Petitioner reapplied for benefits and it was unclear whether the reapplication would affect Petitioner's need for this hearing.

The hearing was convened and completed on November 18, 2015. At this time, the Petitioner's spouse indicated that he had no issue with his wife's benefits from July 2015 going forward. He was only contesting the patient liability for May and June 2015.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, Wisconsin 53703

By: Pamela Kolb, Economic Support Specialist

Waupaca County Department of Social Services
 811 Harding Street
 Waupaca, WI 54981-2087

ADMINISTRATIVE LAW JUDGE:
 Mayumi M. Ishii
 Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is currently a resident of Waushara County.
2. In May 2015, Petitioner went into a nursing home located in Waupaca County.
3. On May 6, 2015, Petitioner completed and mailed in an application for Medicaid benefits.
4. On or about May 12, 2015, the agency received / processed the application for Medicaid benefits.
5. On May 14, 2015, the agency sent the Petitioner a notice indicating that as of May 1, 2015, she was eligible for Nursing Home Long Term Care Medicaid, with a patient liability of \$1,584.85 per month.
6. Petitioner filed a request for fair hearing that was received by the Division of Hearings and Appeals on June 15, 2015.
7. On July 3 2015, the agency sent the Petitioner a notice of proof needed, seeking verification of her health insurance premium and disability income.
8. In July 2015, the Petitioner moved to a CBRF in Waushara County and she applied for Community Waivers Medicaid benefits.
9. On July 17, 2015, the agency sent the Petitioner a notice indicating that her Institution Long-Term Care Medicaid benefits ended July 31, 2015 due to a failure to provide verification.
10. Petitioner's Community Waivers application was approved and she was open for Community Waivers Medicaid benefits effective July 1, 2015, so there was no lapse in coverage.

DISCUSSION

The Petitioner filed an appeal contesting the agency's calculation of the Patient Liability. More specifically, the Petitioner filed an appeal, seeking an increase in the Community Spouse Income Allocation (CSIA). The agency determined the CSIA to be zero, because the income it calculated for Petitioner's spouse exceeded the Minimum Monthly Maintenance Needs Allowance. (MMMNA)

State and federal medical assistance laws contain provisions that allow an institutionalized person to allocate some of his income to his spouse so that she does not fall into poverty. *See* Wis. Stat. § 49.455 and 42 U.S.C. § 13964-5; also see *Medicaid Eligibility Handbook (MEH) §§18.1 and 18.6.1*¹. This is called a Community Spouse Income Allocation or CSIA. (Id.)

Generally speaking, the Community Spouse Income Allocation is calculated by taking the Minimum Monthly Maintenance Needs Allowance (MMMNA) and subtracting from that amount, the Community Spouse's gross monthly income. *MEH §§18.1 and 18.6.1*.

The MMMNA at the time in question was the **lesser** of \$2,980.50 or \$2,621.67 plus excess shelter costs. *MEH § 18.6.2*. Excess shelter costs are shelter costs above \$786.50. Id.

Administrative law judges (ALJs) have the authority to increase the MMMNA when it is insufficient to meet a particular community spouse's basic maintenance needs and when there exist "exceptional circumstances

¹ All references to the Medicaid Eligibility Handbook contained in this decision are from Release 14-02, effective July 1, 2014 through July 29, 2015.

resulting in financial duress" for the community spouse. *Wis. Stat. §49.455(8)(c); Wis. Admin. Code §DHS 103.075(8)(c); MEH §18.6.* "Exceptional circumstances resulting in financial duress" means situations that result in the community spouse not being able to provide for his or her own necessary and basic maintenance needs. *Wis. Admin. Code §DHS 103.075(8)(c); emphasis added.*

I. THE INITIAL MMMNA DETERMINATION PER MEH 18.6.2

In Petitioner's case, the agency determined the MMMNA to be \$2,980.50, based upon the provisions of MEH § 18.6.2. (See Exhibit 44)

Community spouse shelter costs include the community spouse's expenses for:

1. Rent
2. Mortgage principal and interest
3. Taxes and insurance for the principal place of residence. This includes renter's insurance.
4. Any required maintenance fee if the community spouse lives in a condominium or cooperative (i.e. Condo association fees)
5. The standard utility allowance established under the FoodShare program.

MEH § 18.6.2

Applying the foregoing to Petitioner's spouse, his shelter costs are as follows:

\$694.04 Mortgage
 \$100.76 Mortgage Insurance
 \$91.14 Homeowner's Insurance (1/3 of \$273.41 of premium for home and two cars)
 \$165.25 Property Taxes (\$1983 per year / 12)
 +\$446.00 Standard Utility Allowance from the FoodShare Wisconsin Handbook §8.1.3

\$1497.19 Total Monthly Shelter Costs
 -\$786.50

\$710.69 Excess Shelter Costs

\$2621.67 + \$710.69 = \$3332.36

\$2,980.50 is less than \$3332.36; so the agency correctly followed the Medicaid rules and implemented an MMMNA of \$2,980.50, per MEH 18.6.2.

II. SHOULD THE MMMNA BE INCREASED BEYOND \$2980.50, DUE TO THE SPOUSE'S MONTHLY EXPENSES?

The only expenses that may be counted are the **basic and necessary expenses of the spouse** that must be paid, in order to prevent him from falling into impoverishment. Of the expenses presented, the allowable **monthly** expenses, for May and June 2015, are as follows:

Mortgage	\$694.04
Credit Card 1	\$0 not allowed as this is Petitioner's expense; not the spouse's
Credit Card 2	\$300.00 (allowed, at this time, to give the spouse an opportunity to demonstrate fiscal responsibility)
Internet service (spouse uses it for work)	
Tuck Loan	\$135.00
401K Loan	\$748.54 (allowed, at this time, to give the spouse an opportunity to demonstrate fiscal responsibility)
Alliant Energy	\$72.02
**Century Link - Satellite Television is not a basic	\$0

and necessary expense and as such, is not allowable.	
Century Link – landline phone and internet	\$97.06 (land line allowed, at this time, but in the future might not be, since cell phone is also allowed)
Property Taxes	\$165.25 (\$1983 per year / 12 months)
LP Gas	\$100.00 per month
Groceries and Hygiene products	\$356.69
Cell phone	\$86.83
Fuel for car	\$271.71
Car Service/Maintenance	\$208.66 per month
Life Insurance - Petitioner	Not allowable, because it is not the spouse's expense
Life Insurance - Spouse	Not allowable; no indication it is tied to a burial trust
Mortgage Insurance	\$100.76 Mortgage Insurance
Auto and Homeowner's Insurance	\$273.41 per month
Chiropractor	\$111.00
Prescriptions	\$27.36 (\$82.09/3 months)
Taxes (Federal, State, FICA, Medicare, etc) withheld from [REDACTED]	\$870.52
Taxes (Federal, State, FICA, Medicare, etc) withheld from [REDACTED]	\$174.84
Health Insurance	\$70.15
Dental Insurance	\$24.82
Vision	\$9.02
Petitioner's Spouse did not mention expenses for household supplies such as cleaning supplies, but it is reasonable to conclude he incurred such expenses	\$50.00 per month estimate
Petitioner's spouse did not mention expenses for home maintenance, i.e. repairs, lawn care, etc, but it is reasonable that he incurred those also.	\$50.00 per month estimate
Total Monthly Expenses:	\$4997.68

The total of the spouse's monthly expenses, \$4997.68, exceeds the standard MMMNA of \$2,980.50. MEH §18.6.2 As such, an increase in the MMMNA is warranted.

III. THE COMMUNITY SPOUSE INCOME ALLOCATION

As discussed above, the formula for calculating the CSIA is as follows:

MMMNA
-Spouse's monthly gross income

Community Spouse Income Allocation

The agency determined the Community Spouse Income Allocation to be zero, because the spouse's income exceeded the standard MMMNA.

Petitioner's spouse receives income from two jobs, [REDACTED] and [REDACTED].

Petitioner's spouse provided one month worth of pay stubs from [REDACTED]; a check dated April 23, 2015 showing 55.72 hours worked at \$9.40 an hour and another dated May 1, 2015, showing 64.26 hours worked at \$9.40 an hour. The agency correctly averaged the hours worked as 59.99 hours per bi-weekly pay period, which yields a monthly gross income of \$1127.82 per month.

Petitioner's spouse also provided paystubs from [REDACTED]; a check dated March 27, 2015, showing 80.25 hours worked at \$21.17 per hour; one dated April 10, 2015 showing 80 hours worked at \$21.17 per hour; one dated

April 24, 2015 showing 80.24 hours worked, and one dated May 8, 2015 showing 80.25 hours worked. The agency correctly averaged the hours worked at 80.19 hours per bi-weekly pay period, which yields a monthly gross income of \$3,395.24.

Totaling the spouse's gross monthly income in May 2015:

\$1,127.82	██████████
+\$3,395.24	██████████
<hr/>	
\$4523.06	Total Income

So for May and June 2015, the CSIA should have been:

\$4997.68	Adjusted MMMNA
-\$4523.06	Spouse's monthly gross income
<hr/>	
\$474.62	Community Spouse Income Allocation

IV. PATIENT LIABILITY/COST OF CARE

Per MEH 18.6.4, the patient liability/cost of care for an institutionalized individual with a spouse is calculated as follows:

Institutionalized Person's Gross Monthly Income
- \$45.00 Personal Needs Allowance per MEH 39.4.2
- Community Spouse Income Allocation
-Dependent family member allowance (not applicable here)
-Court ordered guardian or attorney fees (not applicable here)
-Medical/Remedial expenses, including health insurance premiums

Patient Liability

At the time in question, Petitioner received \$514.96 per month from a pension, \$671.45 per month from a disability insurance policy and \$701.00 from Social Security Disability Income (this is after \$104.90 is deducted for Medicare Part B), for total monthly income of \$1887.41.

Petitioner pays \$331.20 per month for other health insurance. (Exhibits 8 and 15)

So, Petitioner's patient liability works out to be:

\$1887.41	Petitioner's gross income
-\$45.00	Personal Needs Allowance
-\$474.62	Community Spouse Income Allocation
-\$331.20	for health insurance

\$1036.59 Patient Liability

CONCLUSIONS OF LAW

Petitioner's patient liability for May and June 2015 may be adjusted by increasing the spousal income allocation.

THEREFORE, it is

ORDERED

That the agency adjust the Petitioner's patient liability for May and June 2015 to reflect a patient liability of \$1036.59 per month. The agency shall all take administrative steps necessary to complete this task within ten days of this decision.

REQUEST FOR A REHEARING

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

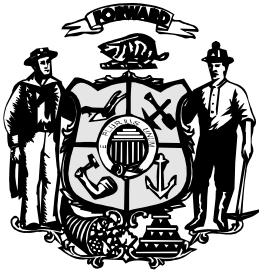
APPEAL TO COURT

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, Madison, Wisconsin 53703, **and** on those identified in this decision as "PARTIES IN INTEREST" **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Milwaukee,
Wisconsin, this 18th day of November, 2015

\sMayumi M. Ishii
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

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The preceding decision was sent to the following parties on November 18, 2015.

Waupaca County Department of Social Services
Division of Health Care Access and Accountability